IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Crl.Rev.Pet.No. 3833 of 2007()

CMP. 5144/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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REVN. PETITIONER: COMPLAINANT:

NASAR, S/O.ABDUL KHADIR,
MANAGING PARTNER, SREEKRISHNA AGENCIES,
MUTHUVATTUR, RESIDING AT KARUKATHALA HOUSE,
KARANCHIRA DESOM, KATTOOR VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
DIRECTOR OF PROSECUTIONS, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 3833 of 2007

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Dated: 20-11-2007

ORDER

Styling himself to be the Managing partner of a partnership firm by name Sreekrishna Agencies, Muthuvattor represented by his power-of-attorney holder one Basheer @ Basheerkhan, the revision petitioner (Nazar) filed a complaint under Sec. 138 of the Negotiable Instruments Act, 1881 in respect of a cheque for a sum of Rs. 1,50,000 allegedly issued by the accused. The complaint was registered as C.M.P. No. 5144 of 2007 on the file of the J.F.C.M, Irinjalakkuda.

2. As per the averments in the complaint, the complainant is a dealer in petroleum products and the accused was a customer of the partnership firm by name Sreekrishna Agencies and in discharge of a legally enforceable debt towards the said firm, the accused handed over the cheque dated 24-5-2005 for Rs. 1,50,000/- drawn on the Chavakkad Branch of the City Union Bank, when the cheque was presented through the State Bank of Travancore, Irinjalakkuda, it was dishonoured by the drawee bank due to insufficiency of fund and in spite of due receipt of the statutory notice the accused did not pay the cheque amount.

3. The learned Magistrate held that eventhough the

cheque was in the name of the partnership firm by name Sreekrishna Agencies, the complaint was filed by the Managing Partner of Sreekrishna Agencies and that the managing partner not being the payee or holder-in-due-course was not entitled to file the complaint. The complaint was accordingly dismissed on 10-08-2007 as not maintainable.

4. Since the complaint was dismissed even without issuing process to the accused, notice to the accused is dispensed with in this revision.

5. The stand taken by the Magistrate cannot be supported in law. It is true that the cheque in question is drawn in favour of Sreekrishna Agencies of which the complainant is admittedly the Managing Partner. Had it been a civil suit, Nasar, the managing partner would have been, by virtue of the provisions of Order XXX C.P.C., entitled to sue or be sued in the name of the firm. But in the absence of any enabling provision in the Cr.P.C. the managing partner is not entitled to file a complaint in the name of the firm. However, any partner including the Managing Partner who is an agent of the firm is entitled to file a complaint on behalf of the firm. In the absence of a provision analogous to Order XXX C.P.C., it is not permissible to file a complaint in the name of the firm. The position would be different if it is the accused which is a partnership firm in which case the legal fiction under Section 141 of the Negotiable Instruments Act, would operate. Even in the case of a suit instituted by or in the name of a firm, the legal position is that it is really a suit by or in the name of its partners

and the decree passed against the firm is in effect a decree against all the partners. **See Madalasa Devi v. Ram Narayan – 1965 SC 1780.** The revision petitioner who is the managing partner of the firm which in turn is the payee under the cheque was perfectly competent to lodge the complaint. The order dated 10-8-2007 passed by the Magistrate is unsustainable and is accordingly dislodged. C.M.P. no. 5144 of 2007 will therefore stand restored to file and shall be proceeded with in accordance with law.

V. RAMKUMAR,
(JUDGE)

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